

LABOUR DEPARTMENT

The 14th May, 1974

No. 3943-4Lab-74/15653.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. VIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Municipal Committee, Hailey Mandi, Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HRYANA,
ROHTAK

Reference No. 192 of 1971

between

SHRI HARISH CHAND AND THE MANAGEMENT OF MUNICIPAL COMMITTEE, HAILEY
MANDI, DISTRICT GURGAON

Present—

Shri C. B. Kaushik, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Harish Chand, concerned workman, was in the service of Municipal Committee, Hailey Mandi, district Gurgaon, as a Clerk since 4th December, 1969. His services were terminated on 23rd March, 1971. Feeling aggrieved he raised a dispute for his reinstatement and back wages but without success.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana referred the dispute for adjudication to this court,—*vide* order No. ID/FD/534-A-71/31762-66, dated 27th October, 1971, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, with the following term of reference:—

Whether the termination of services of Shri Harish Chand was justified and in order? If not, to what relief is he entitled?

Usual notices were given to the parties and they put in their respective pleadings. The management contested his claim on merits and raised two preliminary objections, firstly, that the respondent Committee was not an industry and, secondly, that the demand had not been properly raised and, therefore, the reference was bad in law. The following issues arose for determination in the case:—

- (1) Whether the reference is not valid for the reasons given in the preliminary objections?
- (2) Whether the termination of services of Shri Harish Chand was justified and in order? If not, to what relief is he entitled?

The management has examined 4 witnesses including Shri Jagmohan Lal, Secretary, M.W. 1, Shri Udmi Ram, Peon, M.W. 2, Shri Suraj Bhan, ex-President, M.W. 3, and Shri Mata Din, Sadar Moharrir, M.W. 4.

The management has further brought on record documentary evidence consisting of the enquiry proceedings, documents relating thereto and some other record pertaining to the service of the workman Exs. M. 1 to M. 59.

Shri Harish Chand, workman concerned, has himself come into the witness-box beside examining 4 witnesses, namely, Shri Ishwar Dass, Sadar Kanungo, W.W. 1, Shri Alaf Khan, Patwari, W.W. 2, S/Shri Gopi Ram and Raghunandan Parshad, ex-Municipal Commissioners, W.W. 3 and W.W. 4. The documentary evidence relied upon by the workman consists of the letter of his appointment Exhibit W.W. 5/1, suspension order Exhibit W.W. 5/2, some representations and other correspondence exchanged between him and the management and other higher authorities Exhibit W.W. 5/3 W.W. 5/43.

The case has been fully argued on both sides. Written arguments have also been filed on behalf of the workman. I have given a very careful consideration to the material on record and the contentions raised by the learned representatives of the parties. The issues may be taken up separately.

Issue No. 1.

There is not much to discuss with regard to this issue. A perusal of the record would show that before initiating the conciliation proceedings on the basis of the demand notice dated 12th April, 1971 Exhibit W. W. 5/40, which forms part of the present reference. This workman had earlier given demand notice dated 26th March, 1971 Exhibit W. W. 5/37 direct to the management under registered cover, postal receipt Exhibit W. W. 5/38 and A. D. receipt Exhibit W. W. 5/39. It cannot, therefore, be said that the demand had not been first raised direct on the management and rejected by it before taking up the matter for conciliation. He had received no response to the aforesaid demand notice Exhibit W. W. 5/37 which amounted to the rejection of his demand and as such there did exist an industrial dispute within the meaning of the law. The plea that the Municipal Committee, Hailey Mandi is not an industry has not been pressed on behalf of the management. That disposes of issue No. 1 which for the reasons stated above is decided against the management and in favour of the workman.

Issue No. 2.

A perusal of the material on record would show that there were charges of misappropriation and loss of some documents (two Farads) said to have been received from Shri Alif Khan, Patwari and an enquiry was also held against this workman, but the termination of his services does not appear to have been brought about on the basis of these allegations or by way of punishment. He was appointed on probation for one year,—*vide* order dated 4th December, 1969 Exhibit M. 7 and was placed under suspension on 7th September, 1970 as there were some complaints of misappropriation of Municipal Funds and non-performance of his duties properly. The record further reveals that he had been given as many as 4 warnings during the period of his service. The impugned order of the termination of his services, however, does not relate to any misconduct alleged to have been committed by this workman. It is an order of termination simpliciter on account of his unsatisfactory performance during the period of probation without attaching any stigma to him. The learned representative of the management has vehemently argued that since this workman was appointed on probation and there was no term in the contract of his service that on the expiry of the period of probation he would automatically be treated as a confirmed employee, he continued to remain in service on probation and since his work was not found up to the mark, the management (The Municipal Committee) was within its rights to terminate his services on this ground alone without assigning any reason.

On the other hand, it has been argued on behalf of the workman that his services were terminated by way of punishment and the impugned order was based upon considerations of victimisation as the President of the Municipal Committee was not pleased to him and wanted to appoint his own man in his place and as such the order is not sustainable.

After giving a very thoughtful consideration to the facts on record, I did no substance in the contention raised on behalf of the workman. There is no averment in the demand notice and the statement of claim filed in the case that the President of the Municipal Committee had any ill-will against this workman or the impugned order of the termination of his services was based upon considerations of victimisation. No evidence has either been led to show that the President had any malafides against him.

The appointment letter Exhibit M. 7 is quite clear. The appointment of the workman was on probation for a period of one year, but it was nowhere mentioned in this order that after the expiry of the said probation period he would automatically be treated as a regular or confirmed employee. On the other hand, it has come in evidence that on account of certain complaints against him, he had been placed under suspension during the period of probation on 7th September, 1970. The learned representative of the management has invited my attention to 1973 (27) F. L. R. Page 20 Kedar Nath Behal *versus* State of Punjab and others wherein Hon'ble the Supreme Court was pleased to observe as under :

"Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period of probation or there is a specific service rule to that effect expiry of the period of probation does not lead to confirmation and the employee will continue as probationer till an order of confirmation is passed."

No authority to the contrary has been cited on behalf of the workmen. The contention raised by the learned representative of the management that in the absence of proof to the contrary this workman continued to remain on probation should, therefore, prevail.

Moreover, it is a simple case of termination of services of the workman by the management. The termination order Ex. M. 42 speaks for itself. No stigma has been attached to him nor does the order indicate that it was passed by way of punishment on account of any misconduct on the part of the workman. His appointment being on probation and his work having not been found up to the mark, the management was fully competent to pass an order of termination of his services simpliciter and, in the circumstances, he is not competent to challenge the validity of this order.

Assuming for the sake of argument that the impugned order was passed by way of punishment, taking into consideration the facts established on the record, I think the management was fully justified in taking this disciplinary action against him. The perusal of the record would show that 2 Farads (copies of revenue record) had been obtained by the Committee from Patwari Alaf Khan which had been issued by him not on the regular receipts maintained in the prescribed manner but on blank papers one for Rs. 4 and the other for Rs. 10. Some complaints had been made against the said Patwari and an enquiry was held into those complaints by the Naib-Tehsildar to whom the receipts issued by the Patwari had been shown and copies thereof had been supplied. But subsequently when the Enquiry Officer asked for the original receipts the same were found to be missing from the custody of the present workmen. He had no satisfactory explanation to give for the loss of those receipts. There were charges of misappropriation of certain Municipal amounts against him and a regular enquiry was held into these charges by the President of the Committee after giving him opportunity of being fully heard. The charges were established in that enquiry. Nothing worth consideration has been shown on behalf of the workman to invalidate that enquiry. So, on the basis of the charges of misconduct established against him, the management could dismiss him from service by way of punishment. However, a safer and more lenient action was taken by passing an order of termination of his services simpliciter on the ground of his work having not been found satisfactory during the period of probation.

So, judged from whatever angle the termination of the services of the present workman by the management is perfectly justified and in order. The issue is, therefore, decided against him. That finishes the entire case. No other point worth consideration has been urged. The award is accordingly made holding that the termination of the services of the workman concerned being justified and in order, he is not entitled to any relief by way of reinstatement or payment of back dues. In the circumstances, I shall make no order as to costs.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 974, dated 29th April, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 3942-4Lab-74/15732.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Haryana Roadways, Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 32 of 1972

between

SHRI SUNDER SINGH AND THE MANAGEMENT OF HARYANA ROADWAYS,
GURGAON.

Present:—

Shri C. B. Kaushik, for the workman.

Shri K. L. Piplani, for the management.

AWARD

Shri Sunder Singh concerned workman was in the service of Haryana Roadways, Gurgaon. The management terminated his services with effect from 8th July, 1971. Feeling aggrieved he raised a dispute which was referred for adjudication to this court by order No. ID/GG/105-A-71/1448, dated 19th January, 1972 of the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, with the following term of reference.

Whether the termination of services of Shri Sunder Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference usual notices were given to the parties and they put in their pleadings. The management contended that Shri Sunder Singh was employed only on casual basis and he was, therefore, not a workman as defined under the Industrial Disputes Act, 1947. It was further alleged that his services were dispensed with when no longer required. The following issues arose for determination in the case.

1. Whether the applicant does not fall within the definition of a workman because he was employed on casual basis ?
2. If issue No. 1 is found in favour of the applicant whether the termination of his services was justified and in order ? If not, to what relief is he entitled ?

The management has examined Shri Jawahar Lal, Clerk concerned who has deposed that the employment of the present workman was on daily wages and he had worked from 20th January, 1969 to 8th July, 1971 and that he had asked for certificate of service which was given to him and is Exhibit M.1 on record. On the other hand, the workman concerned has made his own statement that his appointment had been made on regular basis through the Employment Exchange. He has referred to 2 documents, experience certificate Exhibit W.1 and copy of the order dated 12th February, 1970 Exhibit W.2.

The case has been argued on both sides and I have given a careful consideration to the material on record. The issue may be taken up separately.

Issue No. 1

Nothing worth consideration has been argued with regard to issue No. 1 because even a person engaged on casual basis or as a casual worker is a worker within the meaning of section 2(s) of the Industrial Disputes Act, 1947, the issue is, therefore, decided against the management.

Issue No. 2

There is nothing to indicate that the services of this workman had been engaged through the Employment Exchange. The certificate Exhibit W.1 brought on record by him rather shows to the contrary that he had not been sponsored by the Employment Exchange and therefore his services were being discharged. In the order dated 12th February, 1970 copy Exhibit W. 2 also it has been mentioned that he was working on daily wages and his services were no longer required. That is not the end of the case. He had asked for a service certificate,—*vide* application dated 27th February, 1971 Exhibit M.1 wherein he had mentioned in clear and unambiguous words that he had been working on daily wages and required the certificate for the enrolment of his name in the Employment Exchange.

So, in view of the facts discussed above which have been fully established in the case, I do not find anything wrong with the impugned order of the termination of the services of the present workman who had been engaged on daily wages and the management was fully competent to dispense with his services when no longer required. It is clearly a case of termination of services simpliciter and no stigma has been attached to him. He is, therefore, not competent to question the validity of the order. The issue No. 2 is decided against him and in favour of the management.

In view of my finding on issue No. 2 and for the reasons aforesaid the termination of the services of the present workman by the management is perfectly justified and in order and as such he is not entitled to any relief by way of reinstatement or payment of back wages. The award is made accordingly but there shall be no order as to costs.

Dated 26th April, 1974.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 973, dated 29th April, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

S. N. BHANOT,
Commissioner for Labour and Employment & Secy.